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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. .....

LOUIS H. COOK, Trustee,
Petitioner,

vs.

R. R. HANNAH, J. H. A. CHRISTIANSEN, and CHRISS M. OLSON, as the Board of Supervisors of Crawford County, Iowa,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Louis H. Cook, Trustee, prays that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of Iowa, same being the court of last resort, entered in the above case on August 9, 1941, by a divided court, sustaining the validity of a statute of the State of Iowa having to do with taxation, which statute was challenged as violating the equal protection and due process clauses of Section 1 of the 14th Amendment to the Constitution of the United States. The Supreme Court of Iowa

reversed the judgment of the District Court of Crawford County, Iowa, dated April 26, 1940, which judgment had held the said statute to be unconstitutional, and by his counsel petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This suit involves the constitutionality of an Iowa statute. This is the first of a large number of suits instituted by different taxpayers in many Iowa counties, all of which suits are now pending and will be controlled by the final decision in this case.

The petitioner herein as trustee, on behalf of his assignors, being citizens and taxpayers in Crawford County, Iowa, heretofore filed with the proper officials, claims for refunds of taxes illegally collected. These claims were denied. This suit in mandamus was then instituted in the District Court of Crawford County, Iowa, to compel the County Board of Supervisors of said county to refund the excessive taxes collected.

Petitioner's cause of action grows out of the following events:

For many years prior to 1934, property taxes in Iowa were raised under a uniform statutory plan of taxation. So far as material here, this plan for raising tax revenue in the several taxing districts of the State consisted of the local tax levying bodies certifying to their respective county auditors the amounts of their budget requirements for the ensuing tax year. The county auditors then computed the tax rates which, when applied to the valuation of the taxable property in the several taxing districts, raised the full amounts of these budget requirements. In addition to the property taxes so raised, moneys and credits throughout the entire State were uniformly taxed by statute, Section 6985 of the Iowa

Code, at the rate of five (5) mills on the dollar. Accordingly, county auditors taxed the moneys and credits within their respective counties at this five (5) mill rate, which raised additional tax revenue over and above the taxes which were raised on other property to meet the budget requirements, and this additional revenue was distributed proportionately among the several taxing districts under the provisions of Section 6986 of the Iowa Code. Thus, the revenue derived from the tax on moneys and credits was in addition to the actual taxing needs, and such revenue became a cushion or buffer fund for the various taxing bodies.

In the year 1934, the State legislature by statute changed the general plan of taxation throughout the State, although no change was made in the taxation of moneys and credits. This change was by a uniform State law which required the county auditors in the various counties, before fixing the tax rates to be applied against property other than moneys and credits, to first proportionately deduct from the budget requirements of each taxing district the amount of revenue which would be raised by the tax on moneys and credits. (Section 7164, Code of Iowa, 1931, as amended by the Acts of the 45th General Assembly in Extra Session, now appearing as Section 7164, Code of Iowa, 1939.) This change eliminated the cushion or buffer fund which the tax on moneys and credits had previously created. It required the county auditors to take into account the revenue which each taxing district would derive from the tax on moneys and credits *before fixing* the general tax rates upon which taxes were levied. This of necessity resulted in a lower rate of taxation with a resultant saving to the taxpayers in each county of the State where the statute was complied with.

Although the statute adopted by the legislature in 1934 requiring the deduction of the revenue derived from the moneys and credits tax was of uniform operation without any exception for any county in the State, a good many of

the county auditors in Iowa, including the county auditor of Crawford County, wholly ignored this statute and the change in the law. (R. 37, 38, 39.)

There are 99 counties in Iowa, and in 1934, the first year that the change in the tax law became effective, 78 county auditors utterly ignored the change which the legislature had made and proceeded to compute their tax rates under the "old plan", and did not first deduct from the budget requirements within their respective counties the revenues derived from the moneys and credits tax as the statute required. From 1934 through 1936, being the years involved in this litigation, the number of county auditors who failed to comply with the change in the law fluctuated and the county auditors in some of the counties failed to comply with the change in the statute during all three years. In the remaining counties the county auditors fully complied and fixed proper and legal rates in accordance with the method prescribed by statute. (R. 37, 38, 39.) In Crawford County, wherein this suit arises, the County Auditor failed to comply in the years 1934, 1935 and 1936.

As a result, the citizens in a number of counties were taxed in accordance with the general principle or plan of taxation prescribed by the legislature. But in a majority of the counties, the statute was violated or ignored by the county auditors. In such counties, the county auditors fixed and applied against the property of this petitioner's assignors and many other taxpayers, excessive and illegal tax rates, in greater amounts than the amounts actually levied by the proper tax levying bodies, resulting in the collection of excessive and unlawful amounts. (So found by the trial court, R. 7, 49, 51, 52, and as found by the Supreme Court of Iowa, R. 65, 66.) All of this was done without any notice whatever to the taxpayers. After the budgets have been fixed and the taxable value of all property has been determined, the computation of the tax rates is purely ministerial, and the

statutes of Iowa do not provide for any notice or hearing thereon.

The discrimination among citizens throughout the State arose not because taxpayers in the different counties stood in any different classification in the assessment and taxation of their property, but the discrimination arose solely because the county auditors in some counties ignored the plain provisions of the law, whereas in other counties the county auditors complied therewith.

The trial court found:

> "The legalizing act makes no attempt to equalize the inequalities of taxation and place the taxpayers on a common level, but its purpose is to declare valid the unlawful collection of taxes imposed on certain taxpayers, whereas other taxpayers similarly situated are not subjected to such illegal tax." (R. 52.)

And the Supreme Court of Iowa said in its opinion:

> "It may at once be conceded that the act does not operate alike upon all citizens of the state." (R. 68.)

The statutes of the State of Iowa provide for a refund of excessive taxes illegally exacted and paid. (Section 7235 of the Iowa Code.)

Several suits were instituted to recover the excessive and illegal amounts collected by reason of the unlawful acts of the county auditors. One of these suits went to the Supreme Court of the State of Iowa. That court held that the taxpayer was entitled to a refund of the excessive and illegal amounts exacted. (R. 41.) This case is reported as *Charles Hewitt & Sons* v. *Keller*, 223 Iowa 1372, 275 N. W. 94. Other suits also went to final judgment in the lower courts, and the claimants obtained refunds. (R. 41, 42.) Still many other suits, including the instant case, some of which were pending in counties where some refunds had

been made, had not gone to final judgment and were still pending when the legislature, in 1939, passed a curative statute, known as House File 85, now Chapter 250 of the Acts of the Forty-eighth General Assembly of Iowa. (R. 11.) This act had for its purpose the legalizing of the illegal tax rates and the excessive and unlawful amounts collected thereunder, for the years in question, in the counties wherein the excessive and illegal rates had been applied as stated herein. (Curative Statute, R. 13.)

The curative statute was then pleaded in the District Court as a complete defense to this petitioner's right of recovery. (R. 12, 13.) In reply this petitioner contended that the legislature had no power to enact such a curative statute, urging that the acts of the county auditors in fixing and applying the illegal tax rates and the attempt on the part of the legislature to validate the illegal tax rates and the excessive amounts collected thereunder, violated the equal protection and the due process clauses of Section 1 of the 14th Amendment to the Constitution of the United States. (R. 30, 31, 32, 33.) There was no dispute as to the facts. They were mostly stipulated as shown by the record.

The District Court of Iowa in and for Crawford County, by a written opinion and decree, held that the discriminations complained of did exist and that the curative statute imposed unequal and non-uniform taxation throughout the State; that in Crawford County rates as high as in excess of five (5) mills over the legal rates were applied against the property of some of the taxpayers in that county who were petitioner's assignors. That court followed the *Hewitt* case in granting the refunds and further held that the curative statute which was enacted after the decision in the *Hewitt* case was invalid and unconstitutional and accordingly entered judgment for this petitioner. (Findings, R. 49; Decree, R. 53.)

Upon appeal, the Supreme Court of the State of Iowa conceded and so stated in its opinion, that the discriminations and inequalities complained of and as found by the trial court, did exist. (R. 66, 68.) The Supreme Court of Iowa, however, reversed the judgment of the lower court (three of the nine Justices dissenting) and held that the curative act did not violate the due process and equal protection clauses of Section 1 of the 14th Amendment to the Constitution of the United States, and entered final judgment dismissing petitioner's petition.

OPINION OF THE COURT BELOW.

The original opinion of the Iowa Supreme Court is reported in 297 N. W. 262, and is found in the record (R. 65), and the final judgment and order modifying the original opinion and denying a rehearing on August 9, 1941, is found in the record (R. 92).

JURISDICTIONAL STATEMENT.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States to review by writ of certiorari the judgment of the Supreme Court of Iowa, is Section 237 (b) of the Judicial Code, as amended, United States Code Annotated, Title 28, Section 344 (b) which provides:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States; * * * and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

A few of the many cases which also sustain the jurisdiction of this court to review such a judgment by certiorari are *People of State of New York* v. *Zimmerman*, 278 U. S. 63, 49 S. Ct. 61, 73 L. Ed. 184; *Iowa-Des Moines Nat. Bk.* v. *Bennett*, 284 U. S. 239, 52 S. Ct. 133, 76 L. Ed. 265; *Nelson* v. *Sears-Roebuck & Co.*, 312 U. S. 359, 61 S. Ct. 586, No. 9 Adv. Sheets, 85 L. Ed. 522, No. 8 Adv. Sheets; *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346, 59 S. Ct. 528, 83 L. Ed. 752; *Louisville Gas & Elec. Co.* v. *Coleman*, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770; *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 348, 43 S. Ct. 125, 67 L. Ed. 297; *Royster Guano Co.* v. *Virginia*, 253 U. S. 412, 40 S. Ct. 560, 64 L. Ed. 989.

STATUTE OF THE STATE OF IOWA THE VALIDITY OF WHICH IS INVOLVED.

The statute of the State of Iowa, the constitutionality of which is involved and which this petitioner challenges, is Chapter 250 of the Acts of the Forty-eighth General Assembly of Iowa, which had for its purpose the validating of the excessive and illegal tax rates and the excessive and illegal amounts collected thereunder in the counties of said state wherein the county auditors failed to comply with the provisions of Section 7164 of the Iowa Code in fixing tax rates. This curative statute reads as follows:

> "AN ACT to legalize any and all tax levies, assessments, or collections during the years 1934, 1935, 1936 and 1937 wherein the county auditor of any county in computing the tax rate failed to deduct from the total budget requirements the tax to be derived from moneys and credits and other moneyed capital, pursuant to the provisions of law as contained in Section seventy-one hundred sixty-four (7164) of the Code.
>
> Be It Enacted by the General Assembly of the State of Iowa:
>
> Section 1. All taxes levied, assessed, or collected wherein the county auditor in computing the tax rate

failed to deduct from the total budget requirements the tax to be derived from moneys and credits and other moneyed capital during the years 1934, 1935, 1936 and 1937, as defined by section seventy-one hundred sixty-four (7164) of the Code, are hereby declared legal and valid.

Section 2. This act being deemed of immediate importance shall be in force and effect from and after its passage and publication in the Northwood Anchor, a newspaper published at Northwood, Iowa, and the Daily Hawk-Eye Gazette, a newspaper published at Burlington, Iowa."

The statute which levies the 5 mill tax on monies and credits is Section 6985 of the Code of Iowa, 1939, (being the same as Section 6985 of the Code of Iowa, 1931), and the statute which apportions the revenue therefrom to the several taxing districts is Section 6986 of the Code of Iowa, 1939, (being the same as Section 6986 of the Code of Iowa, 1931). These statutes read as follows:

"6985. Moneys, credits, and corporation shares of stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stocks not otherwise taxed in kind, shall be assessed and, excepting shares of stock of national, state, and savings banks, and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of actual valuation, same to be assessed and collected where the owner resides.

"6986. The millage tax provided for in Section 6985 shall be in lieu of all other taxes upon moneys and credits and shall be levied by the board of super-

visors, placed upon the tax list and collected by the county treasurer, and the amount collected in the various taxing districts of the state shall be divided between the various funds upon the same pro rata basis as other taxes collected in such taxing district are apportioned."

The statute which directs the county auditors in fixing tax rates is Section 7164 of the Code of Iowa, 1939, (being the same as Section 7164 of the Code of Iowa, 1931, as amended by the Acts of the Forty-fifth General Assembly in extra session) which reads as follows:

"COMPUTATION OF RATE. When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will raise the amount required for such taxing district, and no larger amount.

Provided that the county auditor shall, in computing the tax rate for any taxing district, deduct from the total budget requirements certified by any such district all of the tax to be derived from the moneys and credits and other moneyed capital taxed at a flat rate as provided in Section 6985 and shall then apply such rate to the adjusted taxable value of the property in the district, necessary to raise the amount required after the deductions herein provided have been made."

The statute which directs the refund of excessive taxes illegally exacted and paid is Section 7235 of the Code of Iowa, 1939, (being the same as Section 7235 of the Code of Iowa, 1931) which reads as follows:

"REFUNDING ERRONEOUS TAX. The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon."

The final judgment was entered in the office of the Clerk of the Supreme Court of the State of Iowa on August

9, 1941. On April 8, 1941, the Supreme Court of the State of Iowa had filed an opinion by a divided court, reversing the decree of the trial court and holding that the said curative statute does not violate the said clauses of the 14th Amendment to the Constitution of the United States. Within the time provided by the statute of Iowa, this petitioner filed a petition for rehearing in the Supreme Court of the State of Iowa and on August 9, 1941, the Supreme Court of Iowa filed a supplemental opinion modifying the original opinion filed April 8, 1941, by eliminating a portion thereof which in no manner affected the original holding, and denying this petitioner's petition for rehearing. In pursuance thereof a final judgment was entered in said court on said date (August 9, 1941) sustaining the constitutionality of said curative statute, and dismissing petitioner's cause of action.

THE INVALIDITY OF A STATUTE OF A STATE ON THE GROUND OF ITS BEING REPUGNANT TO THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF SECTION 1 OF THE 14TH AMENDMENT TO THE FEDERAL CONSTITUTION IS INVOLVED IN THIS CASE.

The Supreme Court of the State of Iowa, the highest court of that State, held that the curative statute which had for its purpose the validating of the illegal tax rates and the amounts illegally collected thereunder in certain counties, did not violate the equal protection and due process clauses of Section 1 of the 14th Amendment to the Constitution of the United States. This curative statute was pleaded in the lower court in defendants' amended answer as a complete defense to this petitioner's right to recover. (R. 12, 13.) It was assailed by this petitioner in his reply in paragraphs 34, 35, 38 and 39 (R. 30, 31, 32, 33) as being repugnant to the equal protection and due process clauses of Section 1 of the 14th Amendment to the Constitution of the

United States. It was alleged by this petitioner that the general existing statute, Section 7164 of the Code of Iowa, which provided for the determination of the amounts of the tax rates by the county auditors after taking into account the revenue from the tax on moneys and credits, operated alike upon all citizens and taxpayers in the State; that the acts of the county auditors in a large number of the counties in violating the statute and in fixing and applying excessive and illegal tax rates to one group of taxpayers, while in other counties a valid and lower tax rate was applied to a like group of taxpayers, was discriminatory, and was a denial to those citizens against whose property the illegal rates were applied of the equal protection of the law and was made without any notice and constituted a taking of their property without due process of law.

Also, that after the granting of refunds of the excessive amounts collected to certain of the taxpayers in several such counties, the denial of refunds to other taxpayers in the same counties was a denial of the equal protection of the law; that the denial of the right to obtain refunds of the taxes illegally collected deprived such citizens of their property without due process of law; that the attempt on the part of the legislature through the medium of a curative statute to validate the unconstitutional acts of the several county auditors and the illegal collection of the excessive taxes violated the said provisions of Section 1 of the 14th Amendment to the Constitution of the United States.

The Supreme Court of the State of Iowa, in its decision, after discussing the uniformity clause of the Constitution of the State of Iowa, spoke as follows (R. 77, 78):

> "It is next contended that the curative act amounts to a denial of the equal protection of the laws and grants to citizens in the counties where the auditor made the required deduction for moneys and credits, and in counties where refunds were made, privileges and immunities which were denied to taxpayers in the

counties in which the curative act was operative and no refunds were made, in violation of Section 1 of the fourteenth amendment to the federal constitution and Section 6, Article I, of the state constitution. * * *

The argument in support of this attack is practically the same as the argument in support of appellee's claim that the act is not of uniform operation. What we have said on the subject of uniformity and the authorities discussed in Division II of this opinion sufficiently answer this contention. If the legislature had the right, as we hold it did, to enact this statute which was applicable in all of the 80-some counties where there was no compliance with the law in computing the tax rate, no taxpayer in any of those counties can be heard to complain because of claimed denial of privileges or immunities or equal protection of the law."

The question presented in this case is a question of substance. The immediate amount involved is $4,191.46. Litigation pending awaiting the final outcome of this case involves upwards of $150,000.00 and involves a great many citizens and taxpayers in a large number of counties in the State of Iowa. If the application for this writ is denied many citizens in the State of Iowa from whom have been collected excessive and illegal amounts in taxes will not be permitted to recover taxes so illegally collected from them.

QUESTIONS PRESENTED.

The questions presented in this case are as follows:

1. When the legislature of a State has by a general statute prescribed a method for the computing and levying of a property tax, which statutory method has been complied with in fixing the tax rates which were applied against the taxable property in part of the counties of the state, while a different and unlawful method has been intentionally and systematically applied by county auditors in certain other counties, fixing excessive and illegal tax rates, thus requiring taxpayers in such counties, and in the same

identical class, to pay amounts in excess of their lawful taxes, can the discrimination so created be validated and the taxing districts be permitted to retain the excessive amounts collected, by the subsequent enactment of a curative statute purporting to validate the same, without violating the equal protection and due process clauses of Section 1 of the 14th Amendment to the Constitution of the United States?

2. After a tax has been duly and legally levied by the proper tax levying bodies against the property of a taxpayer, can the State permit its purely ministerial officers to change the method of taxation and increase the amount of the tax over the amount legally levied, without any notice to the taxpayer, without contravening the due process clause of Section 1 of the 14th Amendment to the Constitution of the United States?

3. After taxpayers in certain counties have been required to pay amounts in excess of their lawful taxes and the State has granted refunds of such overpayments to some of such taxpayers, can the State deny the same refunds to other such taxpayers of the same identical class by the subsequent enactment of a curative statute, without violating the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States?

ASSIGNMENT OF ERRORS.

It is submitted that the Supreme Court of Iowa erred in holding:

(a) That after county auditors, acting in behalf of the State in administering a general taxing statute applicable uniformly to the taxable property of all taxpayers, have applied one rate of taxation against the property of one group of taxpayers, while systematically and intentionally applying another and different rate, in direct violation of

such statute, against the identical kind of property in the hands of another identical group of taxpayers, the State can by a curative statute validate the discrimination thus created, notwithstanding the prohibition of the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States.

(b) That after purely ministerial taxing officers, acting for and on behalf of the State, have increased the amount to be exacted from a taxpayer over and above the amount of taxes legally levied, without any notice to the taxpayer, the State can, through a curative statute, validate the taking of such excess amount, without violating the due process clause of Section 1 of the 14th Amendment to the Constitution of the United States.

(c) That the State can under an existing statute, make refunds to one group of taxpayers of excessive amounts illegally collected, and then by a curative statute deny refunds under identical circumstances to another identical group of taxpayers, within the prohibition of the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The reasons relied on by petitioner for the allowance of the writ are as follows:

1. As already pointed out, the questions presented are questions of substance involving the constitutional rights of many citizens and taxpayers of the State of Iowa as to their right to recover upwards of $150,000.00 of excessive taxes illegally collected from them.

2. Petitioner contends that in holding that those taxpayers against whose properties were applied the excessive and illegal tax rates by reason of the arbitrary action of

certain county auditors were not denied the equal protection and due process of the law, the Supreme Court of Iowa has decided a federal question of substance in a way probably not in accord with the applicable decisions of this court, which cases we cite in the subjoined brief.

3. Petitioner contends that in holding the curative statute constitutional and valid and not within the prohibition of the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States, the Supreme Court of Iowa has decided a federal question of substance in a way probably not in accord with the applicable decisions of this court, which we cite in the subjoined brief.

4. The decision of the Supreme Court of Iowa in sustaining said curative statute infringes upon the constitutional rights guaranteed to the citizens of a State under the equal protection and due process clauses of the 14th Amendment to the Constitution.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the Seal of this Honorable Court directed to the Supreme Court of the State of Iowa, commanding that court to certify and send to this court for its review and determination, a full and complete transcript of the records and all proceedings of said Supreme Court had in the case numbered and entitled on its docket, No. 45401, *Louis H. Cook, Trustee,* v. *R. R. Hannah, et al.,* to the end that the decision and judgment of said Supreme Court may be reviewed and reversed by this Honorable Court and that judgment may be entered for this petitioner.

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